

**SURFACE TRANSPORTATION BOARD
OFFICE OF ENVIRONMENTAL ANALYSIS**

FINAL ENVIRONMENTAL ASSESSMENT

ENVIRONMENTAL RECOMMENDATIONS IN DOCKET NO. AB-1053 (Sub-No. 1X)

May 2, 2011

ABANDONMENT TYPE

The time for comments on the Environmental Assessment (EA) has expired in this:

☐ Notice of Exemption ☒ Petition for Exemption ☐ Regulated Abandonment

☐ **NO NEW COMMENTS WERE RECEIVED**

☒ **NEW COMMENTS WERE RECEIVED**

The Office of Environmental Analysis (OEA) served an EA for this proceeding on March 29, 2011 for public review and comment. In the EA, OEA recommended 4 environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

Comments on the EA

On March 30, 2011, OEA received a letter from the Michigan State Historic Preservation Office (SHPO). In the letter (see Attachment 1), the SHPO concludes that no historic properties would be affected by the proposed abandonment (SHPO Reference No. ER-11-225). Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800.4(d)(1), and following consultation with the SHPO and the public, OEA has determined that the proposed abandonment would not affect historic properties listed in or eligible for inclusion in the National Register. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of the railroad's historic report, all relevant correspondence, the EA and this Final EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <http://www.stb.dot.gov>. Accordingly, OEA believes that condition 4 in the EA should be deleted.

On April 21, 2011, OEA received an email from Robert Alderson (outside counsel to the railroad) concerning geodetic station markers (see Attachment 2). The email includes forwarded

correspondence from the National Geodetic Survey (NGS). In the forwarded correspondence, NGS states that no additional consultation with NGS is required because a land surveyor retained by the railroad was unable to locate the 2 geodetic station markers of concern. The land surveyor concludes that the markers have been lost or destroyed, and NGS concurs with this finding. Accordingly, OEA believes that condition 1 in the EA can be deleted.

On April 28, 2011, OEA received an email from the U.S. Fish and Wildlife Service (USFWS) (see Attachment 3). The email confirms the location of the proposed abandonment in Oakland County, MI, acknowledges that the railroad's salvage contractor "will access the railway line using only existing roads and streets that cross the railroad right-of-way," and restates the railroad's conclusion that salvage operation would not impact any federally listed threatened or endangered species. Considering this information, the USFWS states that no further action on this project is required by the Endangered Species Act. Accordingly, OEA believes that condition 2 in the EA can be deleted.

On April 29, 2011, OEA received another email from Robert Alderson concerning Section 404 permitting under the Clean Water Act (see Attachment 4). The email contains forwarded correspondence from the Michigan Department of Environmental Quality (MDEQ), which has delegated authority to implement the Section 404 permitting program. In the email, MDEQ acknowledges (based on railroad-supplied information) that "Haul roads through wetlands, temporary bridges across streams and the like are not required to be installed as part of this project." MDEQ concludes that a Section 404 permit is not required. Accordingly, OEA believes that condition 4 in the EA can be deleted.

Modifications to the EA

Considering the additional correspondence received after the EA was issued, OEA believes that recommended conditions 1 through 4 in the EA should be deleted.

Conclusions

The EA comment period has ended and no conditions are recommended by OEA. Accordingly, OEA believes that the proposed action will not significantly affect the quality of the human environment.

OEA CONTACT: Dave Navecky
202-245-0294
naveckyd@stb.dot.gov

Distribution: Office of Proceedings
OEA Chron
ECT

ATTACHMENT 1



El-18526
2011-14

RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
STATE HISTORIC PRESERVATION OFFICE

GARY HEIDEL
EXECUTIVE DIRECTOR

March 21, 2011

CYNTHIA BROWN
SURFACE TRANSPORTATION BOARD
395 EAST STREET SW
WASHINGTON, D.C. 20423-0001

RE: ER-11-225 Abandonment of Michigan air-line railway right of way, Commerce, Walled Lake and Wixom, Oakland County (STB)

Dear Ms. Brown:

Under the authority of Section 106 of the National Historic Preservation Act of 1966, as amended, we have reviewed the above-cited undertaking at the location noted above. Based on the information provided for our review, it is the opinion of the State Historic Preservation Officer (SHPO) that no historic properties are affected within the area of potential effects of this undertaking.

The views of the public are essential to informed decision making in the Section 106 process. Federal Agency Officials or their delegated authorities must plan to involve the public in a manner that reflects the nature and complexity of the undertaking, its effects on historic properties and other provisions per 36 CFR § 800.2(d). We remind you that Federal Agency Officials or their delegated authorities are required to consult with the appropriate Indian tribe and/or Tribal Historic Preservation Officer (THPO) when the undertaking may occur on or affect any historic properties on tribal lands. In all cases, whether the project occurs on tribal lands or not, Federal Agency Officials or their delegated authorities are also required to make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties per 36 CFR § 800.2(c-f).

This letter evidences STB's compliance with 36 CFR § 800.4 "Identification of historic properties", and the fulfillment of STB's responsibility to notify the SHPO, as a consulting party in the Section 106 process, under 36 CFR § 800.4(d)(1) "No historic properties affected".

The State Historic Preservation Office is not the office of record for this undertaking. You are therefore asked to maintain a copy of this letter with your environmental review record for this undertaking. If the scope of work changes in any way, or if artifacts or bones are discovered, please notify this office immediately.

If you have any questions, please contact Brian Grennell, Cultural Resource Management Specialist, at (517) 335-2721 or by email at grennellb@michigan.gov. Please reference our project number in all communication with this office regarding this undertaking. Thank you for this opportunity to review and comment, and for your cooperation.

Sincerely,


Martha MacFarlane Fae
Deputy State Historic Preservation Officer

for Brian D. Conway
State Historic Preservation Officer

MMF: DLA: BGG: jlp

Copy: Dirk H. Beckwith



ATTACHMENT 2

EI - 18549



FW: Michigan Air-Line Railway Co.-Abandonment Exemption-Line in Oakland County, Michigan-STB Docket No. AB 1053 (Sub No. 1X)

Bob Alderson to: Dave Navecky

04/21/2011 04:58 PM

Cc: "Brownerturnout", "Bob Butler", "Beckwith, Dirk", "Marty"

History: This message has been replied to.

Mr. Navecky:

I am forwarding to you Mr. Simon Monroe's response to the letter I sent him yesterday, which I forwarded to you a few minutes ago. Although Mr. Monroe's response is a bit unclear, I believe it conveys his determination that there is no need for Michigan Air-Line Railway Co. to consult with NGS further or to notify NGS prior to commencing salvage operations. I would respectfully request a response indicating your concurrence with my understanding of Mr. Monroe's email and that his response makes the first condition recommended in the EA unnecessary. Thank you for your consideration of this request.

Bob Alderson
Attorney for

Michigan Air-Line
Railway Co.

-----Original Message-----

From: Simon Monroe [mailto:Simon.Monroe@noaa.gov]

Sent: Thursday, April 21, 2011 11:05 AM

To: Bob Alderson

Subject: Re: Michigan Air-Line Railway Co.-Abandonment Exemption-Line in Oakland County, Michigan-STB Docket No. AB 1053 (Sub No. 1X)

Dear Mr. Alderson,

I regret my report clear enough for you. After your surveyor determine the survey marks in question were not in harms way, it is a go. The only reason you needed to contact me again, if the marks were in trouble of being disturbed. Thank you for your concerns,
Simon Monroe

On 4/20/2011 2:56 PM, Bob Alderson wrote:

> Dear Mr. Monroe:

> Please see the attached letter regarding the above-referenced
> matter.

>

Bob Alderson

>

Alderson Law Firm

>

>

> From: Barb Baker

> Sent: Wednesday, April 20, 2011 11:55 AM

> To: Bob Alderson

> Subject: Simon Monroe Letter

>

> <<Monroe, Simon Letter 4.20.2011.pdf>>

>

> This electronic message contains information from Alderson, Alderson,
> Weiler, Conklin, Burghart & Crow, L.L.C. and is confidential or
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> that any disclosure, copying, distribution or use of the contents of
> this message is prohibited. If you have received this electronic
> message in error, please notify us immediately by telephone at (785)
> 232-0753 or e-mail us at bakerb@aldersonlaw.com.
>
>

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Simon Monroe
Geodetic Services Division
National Geodetic Survey
NOAA - N/NGS12 - RM. 9202
1315 East/West Highway
Silver Spring, MD 20910-3282
Phone: 301-713-3242

ATTACHMENT 3

E1-18550



**Endangered Species Act Section 7 Consultation for the Michigan Air-Line
Railway Co.-Abandonment Exemption-Line in Oakland County, Michigan-STB
Docket No. AB 1053 (Sub No. 1X)
Tameka_Dandridge to: Bob Alderson
Cc: david.navecky**

04/28/2011 02:39 PM

History: This message has been replied to.

1 attachment



pic04428.gif

Mr. Bob Alderson
Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C.

Re: Endangered Species Act Section 7 Consultation for the Michigan Air-line
Railway Co. - Abandonment Exemption-Line in Oakland County, Michigan-STB
Docket No. AB 1053 (Sub No. 1X)

Dear Mr. Alderson:

We are responding to your April 20, 2011 letter requesting consultation under section 7 of the Endangered Species Act of 1973, as amended (Act). Under this U.S. Surface Transportation Board (USSTB) regulated project, Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C., attorneys for the Michigan Air-Line Railway Company (MAL Railway), is serving as a non-federal representative for purposes of the Act.

The MAL Railway proposes to file with the USSTB, a Notice of Exemption to abandon approximately 2.99 miles of rail line from the west line of Haggerty Road (Milepost 45.26) to the west line of Ladd Road (Milepost 48.25). A railroad salvage contractor will remove and salvage the rail, ties, and other track materials (exclusive of ballast) on the abandoned line. According to your letter and our mid-April 2011 telephone conversation, the salvage contractor will access the railway line using only existing roads and streets that cross the railroad right-of-way. Proposed activities will occur in township 2N, range 8E, sections 25, 26, 34, and 35, Oakland County.

Your analyses addressed potential effects on the endangered Indiana bat (Myotis

sodalis), proposed as endangered rayed bean mussel (*Villosa fabalis*) and snuffbox mussel (*Epioblasma triquerta*), and candidate eastern massasauga rattlesnake (*Sistrurus catenatus catenatus*). You have indicated the salvage operations will have no impact on these species due to lack of habitat along the railway line

Candidate species

The candidate eastern massasauga rattlesnake may occur near the proposed action area. Eastern massasauga habitat is typically associated with open shallow wetland systems. The rattlesnake prefers habitat with an open canopy and sedge or grass ground cover. The Act does not extend protection to candidate species, but we encourage their consideration in resource planning. If early evaluation of your project indicates that it may impact a candidate, your agency may request technical assistance from this office. Avoidance of unnecessary impacts to candidate species will reduce the likelihood that they will require the protection of the Act in the future.

This precludes the need for further action on this project as required by the Act. If the project is modified or new information about the project becomes available that indicates listed species or critical habitat may be affected in a manner or to an extent not previously considered, you should reinitiate consultation with this office.

We appreciate the opportunity to cooperate with you in conserving endangered species. If you have any questions regarding these comments, please contact me at the below telephone number or email.

Sincerely,
Tameka N. Dandridge

Tameka Dandridge
U.S. Fish & Wildlife Service
East Lansing Field Office
2651 Coolidge Rd., Suite 101
East Lansing, MI 48823
517-351-8315
tameka_dandridge@fws.gov
"Bob Alderson" <boba@aldersonlaw.com>

"Bob
Alderson"
<boba@aldersonlaw.com>
To: <Tameka_Dandridge@fws.gov>
cc
Subj: Michigan Air-Line Railway Co.-Abandonment Exemption-Line
ection Oakland County, Michigan-STB Docket No. AB 1053 (Sub
No. 1X)
04/20/2011
02:53
PM

Dear Ms. Dandridge:

Please see the attached letter regarding the above-referenced matter.

Bob Alderson

Alderson Law Firm

From: Barb Baker
Sent: Wednesday, April 20, 2011 11:55 AM
To: Bob Alderson
Subject: Tameka Dandridge Letter

<<Dandridge, Tameka Letter 4.20.2011.pdf>>

This electronic message contains information from Alderson, Alderson, Weiler, Conklin, Burghart & Crow, L.L.C. and is confidential or privileged. The information is intended for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately by telephone at (785) 232-0753 or e-mail us at bakerb@aldersonlaw.com .[attachment "Dandridge, Tameka Letter 4.20.2011.pdf" deleted by Tameka Dandridge/R3/FWS/DOI]

E1-18551

ATTACHMENT 4



FW: Michigan Air-Line Railway Petition for Exemption before the Surface Transportation Board

Bob Alderson to: Dave Navecky

04/29/2011 05:11 PM

Mr. Navecky:

I would respectfully request that you review the attached series of emails regarding the 4th condition imposed on Michigan Air-Line Railway Co. in the Environmental Assessment issued by the OEA in STB Docket No. AB-1053 (Sub-No.1X). After your review of these emails, I trust you will concur with the conclusion of my co-counsel in this docket, Dirk Beckwith, that the 4th condition has been satisfied. Thank you for your consideration.

Bob Alderson
Attorney for Michigan Air-Line Railway Co.

From: Beckwith, Dirk [mailto:DBeckwith@fosterswift.com]
Sent: Friday, April 29, 2011 9:17 AM
To: Bob Alderson; Bob Butler; Marty Ramsey
Subject: FW: Michigan Air-Line Railway Petition for Exemption before the Surface Transportation Board

I believe this email will satisfy the fourth condition imposed by the STB. Let me know if I can be of any further assistance. Regards,

Dirk H. Beckwith
Attorney
Foster Swift Collins & Smith PC
32300 Northwestern Hwy., Suite 230
Farmington Hills, MI 48334
Phone: 248.539.9918
Fax: 248.538.3618
dbeckwith@fosterswift.com
www.fosterswift.com

FOSTER SWIFT

🌱 Please consider the environment before printing this email.

From: Hartz, Andrew (DNRE) [mailto:HARTZA@michigan.gov]
Sent: Friday, April 29, 2011 10:08 AM
To: Beckwith, Dirk
Cc: Foose, Melanie (DNRE); Durack, Patrick (DNRE)
Subject: RE: Michigan Air-Line Railway Petition for Exemption before the Surface Transportation Board

Mr. Beckwith,

Thank you for your phone call today. We have not reviewed the report sent. During this mornings phone conversation you relayed to me that the rail line abandonment/removal would occur on the existing railroad grade. Haul roads through wetlands, temporary bridges across streams and the like are not required to be installed as a part of this project.

Aspects of this project that may require permits under the States Wetland, Inland Lakes and Streams and Floodplain regulatory programs include culvert cleanout replacement, bridge installation, haul road construction through wetlands and/or floodplain areas and the placing of fill in wetland, lakes, or floodplains for equipment and rail line staging areas. You have reported to me that none of this type of activity will occur.

Based on the above a permit is not required under the aforementioned regulatory programs. Please contact me if any of the above type work is necessary at any point during the project. ..Andy

Andrew J. Hartz
District Supervisor
Water Resource Unit
Water Resources Division
Michigan Department of Environmental Quality (DEQ)
27700 Donald Court
Warren MI 48092-2793
586-753-3867-Direct line
Hartza@Michigan.gov

From: Beckwith, Dirk [mailto:DBeckwith@fosterswift.com]
Sent: Tuesday, April 19, 2011 2:50 PM
To: Hartz, Andrew (DNRE)
Subject: Michigan Air-Line Railway Petition for Exemption before the Surface Transportation Board

Hello Mr. Hartz. My name is Dirk Beckwith and I am local counsel for the Michigan Air-Line Railway ("MAL"). On or about January 28, 2011, MAL filed with the Surface Transportation Board ("STB") a Petition for Exemption relating to approximately 5.45 miles of rail line located in Commerce, Wixom and Walled Lake. The Petition is currently pending before the STB.

Prior to filing the Petition with the STB, on or about January 5, 2011, my co-counsel Bob Alderson, mailed to you, and others, a copy of a Combined Environmental and Historic Report. On March 29, 2011, the STB issued an Environmental Assessment. In the Assessment, the STB, among other things, recommended four conditions (only one of which might pertain to you) be imposed on any decision granting abandonment authority. The one condition that might pertain to you is as follows: "3. MAL Railway shall consult with the Michigan Department of Natural Resources and Environment (MDNRE) prior to beginning salvage activities regarding permitting requirements under Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and, if applicable, shall comply with the reasonable requirements of the MDNRE."

Prior to the issuance of the STB's Environmental Assessment I was proceeding under the understanding that no permitting requirements would be required and there would be no additional requirements of the MDNRE since we had not heard back from you, or the others, after the Combined Environmental and Historic Report was mailed in early January of this year. Would you please contact me upon receipt of this email to advise me whether you are aware of any permitting or other requirements of the MDNRE. I look forward to hearing from you at your earliest convenience. Regards,

Dirk H. Beckwith
Attorney

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32300 Northwestern Hwy., Suite 230
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Phone: 248.539.9918
Fax: 248.538.3618
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